

**Michael J. Barry**  
Director  
Public Policy

**Ameritech RECEIVED**

**MAY 21 1999**

May 21, 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**EX PARTE OR LATE FILED**

Ms. Magalie Romas Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

**Re: Ex Parte Presentation**  
**CC Docket No. 96-115** ✓  
**Subscriber List Information (SLI).**

Dear Ms. Salas:

Ameritech hereby responds to the Association of Directory Publishers ("ADP") Ex Parte letter in this proceeding dated May 4, 1999. ADP incorrectly characterizes the scope of several key provisions in Section 222 of the Act,<sup>1</sup> and unfairly accuses Ameritech of engaging in gamesmanship and delaying this proceeding when, in fact, Ameritech, through its April 28, 1999 Ex Parte submission, was simply responding to a request for information from the Commission staff.

**1. Reasonable Rates for SLI Are Not Tied to Incremental or Forward-Looking Cost.**

ADP urges the Commission to mandate incremental cost-based rates for subscriber list information ("SLI").<sup>2</sup> However, Section 222(e) of the Act only requires carriers to provide SLI "under nondiscriminatory and reasonable rates, terms, and conditions."<sup>3</sup> There is nothing in the Act that requires the Commission to establish rates for any SLI product. However, to the extent the Commission proceeds to do so, it must allow "reasonable" SLI rates to incorporate the value that the purchaser of the SLI derives from the data provided. Failure to do so would result in a windfall to the purchasers of SLI.

As Ameritech pointed out previously in this docket, there are significant quality or functionality differences between the SLI products offered by various carriers.<sup>4</sup>

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<sup>1</sup> 47 U.S.C. § 222.

<sup>2</sup> ADP *Ex Parte* of May 4, 1999, at 3.

<sup>3</sup> 47 U.S.C. § 222(e).

<sup>4</sup> Ameritech *Ex Parte* of March 17, 1999, at 2.

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These differences affect the cost of providing the particular product as well as the value of a particular company's SLI product to a directory publisher.<sup>5</sup> In its April 28, 1999 *Ex Parte*, Ameritech noted that it is also a purchaser of listing information in a competitive marketplace. In Ameritech's experience, the pricing of products similar to Base SLI Files, which it purchases from commercial list providers, is typically \$.10 per listing.<sup>6</sup> Information acquired from these sources is both less accurate and older, and therefore, has less value than the SLI local exchange carriers provide to directory publishers. Consequently, any evaluation of the reasonableness of the rates must take into account the value that the SLI purchaser receives and assess the cost-benefit relationship of the alternatives that are available in the marketplace.<sup>7</sup>

Allowing telecommunications carriers to establish SLI rates based on the value of the SLI eliminates the difficult problems identified by Ameritech, BellSouth and others that would be created if the Commission attempted to prescribe a single, nationwide cost-based SLI rate.<sup>8</sup> Instead, the Commission's complaint process is available to those who believe that a specific carrier's rates for SLI products are unreasonable.

Further, however, if the Commission proceeds to establish cost-based rates for Basic (Existing) SLI and SLI Updates, such rates must ensure that each party purchasing the SLI bears a fair share of all the costs, including overhead, involved with building, operating and supporting the listing systems used to produce SLI. Again, rates based on fully-distributed costs cannot be considered to be unreasonably high since that was the historical standard under rate-of-return regulation.

## **2. Base SLI Files Are Not Required to Include Primary Advertising Classifications**

Contrary to ADP's assertion, Base SLI Files, or files of unchanged SLI, are not required by the Act to include a designation of the primary advertising classification unless the telecommunications carrier has that information in its listing database.<sup>9</sup> Section 222(f)(3) defines SLI to mean "any information (A) identifying the listed names

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<sup>5</sup> Ameritech's current "Updates" product serves as an example of how increasing the value of a product by providing it on a daily basis also affects the cost of that product. "Updates" are available only in a paper format which requires manual handling and processing. The more frequently "Updates" are provided, the more frequently costs are incurred to process and deliver a smaller number of "Updates."

<sup>6</sup> Ameritech's *Ex Parte* of April 28, 1999, at 5.

<sup>7</sup>*Id.* at 4.

<sup>8</sup> See, e.g. BellSouth *Ex Parte* of May 3, 1999, at 3. ("[T]he record in this proceeding currently establishes that there are vast differences in the various SLI and update offerings provided by the LECs. There also appear to be substantial cost differences in these service offerings.

<sup>9</sup> ADP *Ex Parte* of May 3, 1999, at 4.

of the subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications."<sup>10</sup> Use of the words "any," "or," and "as...assigned" in the definition of SLI can be reasonably interpreted as applying to any of the four potential SLI components that local exchange carriers may have maintained in their listing systems. The statutory definition of SLI does not create a requirement that the local exchange carriers modify their listing systems to maintain all four components of SLI. Rather, carriers merely must provide whatever SLI components they possess. In adopting this definition, Congress apparently recognized that a provider of local exchange service may not have a business need to retain the primary advertising classification of its subscribers. Indeed, consistent with industry practice, some carriers that contract with a yellow pages publisher may not even request a primary advertising classification from their customers at the time service is established, much less maintain that information.

Both Ameritech's current practice of providing Base SLI Files, including various enhancements and sorting activities, and its proposed definition of Basic (Existing) SLI contained in its April 28, 1999 *Ex Parte*, are consistent with the Act. Subscribers' primary advertising classifications must only be provided in Base SLI Files if a carrier both assigns a primary advertising classification at the time service is established **and** maintains such information in its listing system. Of course, Ameritech also complies with the Act by including the primary advertising classification for newly established subscribers, when it is available, such as the case with the updates Ameritech provides to directory publishers.<sup>11</sup>

### **3. Ameritech's "New Connects" Product Does Not Constitute SLI Updates.**

ADP mistakenly argues that Ameritech's "New Connects" product should be included within the definition of SLI Updates because such information is used to deliver directories.<sup>12</sup> To the contrary, "New Connects" are extracts of SLI updates to which additional sorting and selection criteria have been applied. As such, this is a separate, value-added, enhanced product offered by Ameritech. Moreover, despite ADP's assertion, Section 222(e) of the Act clearly was not intended to require the provision of information to facilitate distribution or delivery of directories. Had Congress intended to address distribution issues, it would not have limited the

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<sup>10</sup> 47 U.S.C. § 222, emphasis added.

<sup>11</sup> Ameritech April 28, 1999, *Ex Parte* at 3

<sup>12</sup> ADP *Ex Parte* of May 4, 1999, at 4. ("[N]ew connect information is also used to deliver directories to new subscribers. Delivery of directories is essential to publishing a directory.")

definition of SLI to information on subscribers with listed telephone numbers, but would have expanded the definition to include information on unlisted subscribers as well.

Even if one were to accept ADP's argument, accurate delivery information could only be maintained by directory publishers if they acquire and track new service installations, change of service locations, and disconnect information, all of which are described in Ameritech's definition of SLI Updates. Clearly, "New Connects" alone will not allow a publisher to maintain a database with accurate delivery information. However, any and all information available in Ameritech's "New Connects" product would also be included in the information that would be provided to purchasers of SLI under Ameritech's proposed definition of SLI Updates.<sup>13</sup>

In addition, numerous distribution alternatives exist that have been employed by Ameritech and other directory publishers. The U.S. Postal Service offers saturation mailing within zip codes. Contractors are available to provide manual delivery to every location within specified areas. New residence and business information also is available from local post offices, realtor associations, and multiple other sources. Even distribution stands in high traffic areas can be used by directory publishers to provide their product to the public. Consequently, there is no barrier to delivery of directories, and no reason why the Act would include delivery information in definition of SLI.

#### **4. Ameritech Has Not Sought to Delay This Proceeding.**

Ameritech has done nothing that would cause a delay in this proceeding. Ameritech's first *Ex Parte* submission on the SLI issue was made on March 17, 1999, following the Commission's public request at its February 25, 1999, open meeting for more information on SLI pricing. The cost information that Ameritech supplied in its subsequent *Ex Parte* of April 28, 1999, was offered in response to a direct request from members of the Commission staff and submitted immediately following an *Ex Parte* conference call with the staff.<sup>14</sup> As Ameritech noted in the April 28, 1999 *Ex Parte*, the proprietary cost information provided to the Commission was incomplete in that it did not encompass all the appropriate costs of supplying SLI, and was based on Ameritech data that was at least three years old. Thus, even though it established a cost basis for SLI *higher* than that proposed by ADP, Ameritech did not wish to characterize the study as a definitive cost model for all telecommunications carriers.

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<sup>13</sup> Ameritech *Ex Parte* of April 28, 1999, at 3.

<sup>14</sup> *Id.* at 1.

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Ameritech has been, and will continue to be, responsive to the Commission's requests for information in this proceeding, and encourages the Commission to adopt the definitions of Basic (Existing) SLI and SLI Updates that were included in Ameritech's *Ex Parte* of April 28, 1999.<sup>15</sup>

Should any further information be required, please feel free to contact me at (248) 524-7385.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Barry".

Michael J. Barry

MJB/jrl

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<sup>15</sup> *Id.* at 2.